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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEM, INC.,
a Delaware Corporation,

Plaintiff,

vs.

SCOTTSDALE INSURANCE
COMPANY, an Ohio Corporation,

Defendant.

CASE NO. 3:20-cv-02950-CRB

**DECLARATION OF BRIAN
 THOMPSON IN SUPPORT OF
 PLAINTIFF'S MOTION FOR
 PARTIAL SUMMARY JUDGMENT
 REGARDING SCOTTSDALE'S
 DEFENSE OBLIGATION**

Date: April 29, 2021
 Time: 10:00 a.m.
 CTRM: 6

I, Brian Thompson, declare as follows:

1. I am one of the founders of Stem, Inc. ("Stem"). (Stem was originally called Powergetics, Inc. until it changed its name in 2012. For the sake of simplicity, I will refer to the company throughout this declaration as Stem, whether before or after the name change.) I served as Stem's Chief Executive Officer ("CEO") from approximately March 2009, when it was founded, until November 2012. I continue to be a shareholder of Stem. I submit this declaration in support of Stem's Motion for Partial Summary Judgment.

1 2. Stacey Reineccius and I founded Stem in or about March 2009 as a
2 clean energy startup devoted to developing energy storage systems for businesses.

3 3. The company was originally called “Powergetics, Inc.,” but changed
4 its name to “Stem, Inc.,” in or about April 2012.

5 4. In August 2010, a potential investor informed me that its investigation
6 had revealed that Mr. Reineccius was misrepresenting his academic background,
7 and events which led to him having a \$1.025 million tax lien imposed on him.

8 5. Regarding his academic background, Mr. Reineccius had represented
9 to me, to Stem’s investors, and to Stem’s potential investors that he had earned a
10 B.A. degree in Computer Science from the University of California at Berkeley
11 (“Berkeley”). On the contrary, however, in September 2010, I discovered that Mr.
12 Reineccius had in fact *dropped out* of Berkeley after his second year there.

13 6. Regarding the \$1.025 million tax lien which had been imposed on Mr.
14 Reineccius by the IRS for the failure of one of his prior companies, Quicknet
15 Technologies, Inc., to pay its payroll taxes, Mr. Reineccius had represented to me
16 that, despite being the CEO of Quicknet, he had had no knowledge of, nor any
17 participation in, the decision at Quicknet to stop its payment of payroll taxes. On
18 the contrary, however, in September 2011, I discovered that after Quicknet’s CFO
19 had been dismissed for failing to pay the company’s payroll taxes, Mr. Reineccius
20 *knowingly continued* this practice.

21 7. In essence, these misrepresentations meant that Mr. Reineccius would
22 no longer have any credibility with Silicon Valley investors, and that so long as he
23 was associated with Stem, the company would be unable to raise the additional
24 capital necessary for its continued existence. In other words, this development
25 posed an existential threat to Stem.

26 8. As a result, on September 22, 2010, I and the Stem board of directors
27 terminated Mr. Reineccius’ employment for “cause” on the ground he had

1 “engaged in knowing and intentional misconduct that was, is or is reasonably
2 likely to be materially injurious to the Company.”

3 9. Subsequently, pursuant to the terms of two Restricted Stock Purchase
4 Agreements, Stem exercised its option to repurchase 5,093,055 shares of *un-vested*
5 stock from Mr. Reineccius, which left him 7,456,945 shares of *vested* stock.

6 10. Mr. Reineccius disputed that his termination was for "cause," and that
7 Stem had the right to repurchase his un-vested shares (the “2010 Employment
8 Dispute”).

9 11. Mr. Reineccius hired three lawyers – Jonathan Gaskin, Richard
10 Grimm, and Gregory Klingsporn – to represent him in connection with the 2010
11 Employment Dispute.

12 12. On October 28, 2010, Mr. Reineccius was removed from Stem’s
13 board of directors.

14 13. I received a letter from Mr. Reineccius to me dated January 19, 2011
15 requesting, pursuant to Section 220 of the Delaware General Corporation Law, that
16 Stem make certain books and records available to him for inspection. Mr.
17 Reineccius explained, “[t]he purpose of my requested inspection is to determine
18 the value of the Corporation’s stock.” A true and correct copy of Mr. Reineccius’s
19 January 19, 2011 letter to me is attached to the separately bound exhibits as Exhibit
20 “I.”

21 14. The risk of potential litigation with one of its founders further
22 hindered Stem’s efforts to attract new investors.

23 15. To resolve this impasse, on February 8, 2011, Stem filed a demand for
24 arbitration with JAMS, naming Mr. Reineccius as respondent, and seeking an order
25 that his termination for “cause” was proper. A true and correct copy of Stem’s
26 “Demand for Arbitration,” dated February 8, 2011, is attached to the separately
27

bound exhibits as Exhibit “J.” A true and correct copy of Stem’s “Arbitration Statement of Claims” is attached to the separately bound exhibits as Exhibit “K.”

16. On March 28, 2011, Stem and Mr. Reineccius entered into a settlement agreement to resolve their disputes (the “2011 Settlement Agreement”). A true and correct copy of the 2011 Settlement Agreement is attached to the separately bound exhibits as Exhibit “L.”

17. In August 2011 (i.e., five months after the 2011 Settlement Agreement with Reineccius), Stem was able to secure a \$6,000,000.00 investment from a venture capital firm called “Angeleno Group” (the “Series A Financing”). As a condition of the Series A Financing, it was agreed that Angeleno’s representative, Zeb Rice, would join myself and David Buzby on Stem’s board of directors, and that Stem would purchase a D&O insurance policy.

18. On September 13, 2011, Stem submitted a signed application to Scottsdale for a “Business and Management Indemnity” policy (the “2011 Application”). A true and correct copy of the 2011 Application is attached to the separately bound exhibits as Exhibit “M.”

19. In response, Scottsdale issued Stem its first D&O Policy, designated by policy number EKS3049560, for the policy period from October 13, 2011 to October 13, 2012 (the “2011-2012 Policy”).

I declare under penalty of perjury under the laws of the United States of America that the above statements are true and correct.

DATED: March 25, 2021

DocuSigned by:
Brian Thompson
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Brian Thompson